

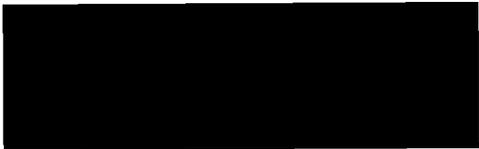
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



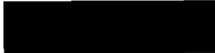
U.S. Citizenship
and Immigration
Services

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FILE:



Office: BOSTON

Date:

MAR 02 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Boston, Massachusetts, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant is a native and citizen of the Republic of Haiti. In a decision dated September 11, 2009 the acting field office director found that the applicant committed fraud or made a material misrepresentation in seeking an immigration benefit and is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with his wife and children. The acting field office director also found that the applicant had failed to establish that the bar to admission would impose extreme hardship on a qualifying relative as per section 212(i)(1) of the Act and denied the waiver application accordingly. On appeal, counsel submitted a brief and additional evidence.

The record contains, among other documents, birth certificates, a marriage license, letters and declarations from the applicant and his wife, medical documents, a report from a social worker, tax returns, printouts of data from Form W-2 Wage and Tax Statements, earnings statements, employment verification letters, passports, I-94 departure records, and printouts of web content pertinent to conditions in Haiti. The web content is from websites maintained by the U.S. Department of State and various other organizations.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Evidence in the record shows that the applicant arrived in the United States by air in Miami on April 24, 1999 and, in seeking admission, presented a passport issued in the name of [REDACTED] thereby falsely representing himself to be [REDACTED]. On appeal, counsel has not disputed the acting field office director's finding that the applicant is inadmissible. The AAO therefore affirms the acting field office director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in

extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Although the record contains some indication that the applicant's mother may be a U.S. citizen or lawful permanent resident, the only hardship evidence submitted pertains to the applicant's wife. The applicant's wife is therefore only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996). (citations omitted)

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may,

in itself, constitute extreme hardship.”) (citations omitted) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to the applicant’s wife must be established in the event that she accompanies the applicant to Haiti and in the event that she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The letters from the applicant’s wife indicate that she would suffer logistical, emotional, and financial hardship if the applicant were removed to Haiti.

The web content printouts described above describe Haiti’s political situation, economy, health care, infant mortality, dangers from violent crime including violence against women and children, dangers from police and military members, dangers from natural disasters, and civil rights situation. All of those sources, including official Travel Warnings, Human Rights Practices reports, and Country Conditions reports from the U.S. Department of State, characterize Haiti’s situation as bleak. The AAO further notes that, according to many measures, Haiti is the poorest country in the Western hemisphere. The AAO notes that all of those printouts were produced prior to the catastrophic earthquakes and aftershocks in Haiti that began on January 12, 2010.

The Department of Homeland Security (DHS) Secretary, Janet Napolitano, has determined that an 18-month designation of Temporary Protected Status (TPS) for Haiti is warranted because of the devastating earthquake and aftershocks which occurred beginning on January 12, 2010. As a result, Haitians in the United States are unable to return safely to their country. Even prior to the current catastrophe, Haiti was subject to years of political and social turmoil and natural disasters. In a travel warning issued on January 28, 2009 the U.S. Department of State noted the extensive damage to the country after four hurricanes struck in August and September 2008 and the chronic danger of violent crime, in particular kidnapping. *U.S. Department of State, Travel Warning – Haiti*, January 28, 2009. Based on the designation of TPS for Haitians and the disastrous conditions which have compounded an already unstable environment, and which will affect the country and people of Haiti for years to come, the AAO finds that requiring the applicant’s wife to join the applicant in Haiti would result in extreme hardship.

For the same reasons, the AAO finds that the applicant's wife would also experience extreme hardship were she to remain in the United States without the applicant. This finding is based on the extreme emotional harm the applicant's wife will experience due to concern about the applicant's well-being and safety in Haiti, a hardship that is beyond the common results of removal or inadmissibility and resulting family separation. This is especially true in the instant case, as the applicant's wife is under a medical doctor's care for adjustment disorder.

The AAO finds that the applicant's removal would cause extreme hardship to his wife, and that the applicant is therefore eligible for a waiver of his inadmissibility. The remaining issue is whether the waiver should be granted as a matter of discretion.

As was noted above, the applicant's children are not qualifying relatives under section 212(i)(1) of the Act. Hardship to them is not, therefore, directly relevant to whether the applicant is statutorily eligible for waiver and, as was noted above, was not considered in that determination. Having found that the applicant is statutorily eligible to be considered for waiver, however, the AAO may now consider any factor it deems relevant to whether waiver should be granted as a matter of discretion, including hardship to the applicant's children. The applicant's daughter's birth certificate shows that she was born on April 17, 2004, and is less than six years old as this decision is written. The applicant's son was born on August 20, 2005, and he is less than five years old.

Thus, the positive factors in this case include hardship that the applicant's U.S. citizen children and his wife, in addition to his payment of taxes and lack of a criminal record. The negative factor is the applicant's entry into the United States based on a misrepresentation and his violation of related immigration laws. While the applicant's actions cannot be condoned, the AAO finds that given all the circumstances of the present case, the applicant has established that the favorable factors outweigh the unfavorable factors, and that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained and the application approved.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application approved.